

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARLON PALMER,

Plaintiff,

v.

JOHN ZANONI,

Defendant.

Case No.: 1:23-cv-00960-ADA-SKO (PC)

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS TO DISMISS
ACTION FOR FAILURE TO OBEY COURT
ORDERS AND FAILURE TO PROSECUTE**

**ORDER DIRECTING PLAINTIFF TO
SUBMIT COMPLETED APPLICATION TO
PROCEED *IN FORMA PAUPERIS* WITHIN
21 DAYS**

Plaintiff Marlon Palmer is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

I. PROCEDURAL BACKGROUND

Plaintiff initiated this action by filing his complaint on June 27, 2023. (Doc. 1.) On that same date, this Court issued prisoner new case documents. (Doc. 2.)

On June 29, 2023, the Court issued an Order directing Plaintiff to file an application to proceed *in forma pauperis* (“IFP”) or to pay the filing fee, within 45 days. (Doc. 3.)

On July 5, 2023, the United States Postal Service returned the prisoner new case documents to the Court, marked “Undeliverable, Not in Custody.” (*See* Docket Entry dated 7/5/23.) On July 17, 2023, Plaintiff filed a Notice of Change of Address. (Doc. 4.)

On July 18, 2023, the prisoner new case documents and the Order directing Plaintiff to file an IFP application or to pay the filing fee were re-served on Plaintiff to his new address of record: Central Valley Annex, P.O. Box 637, McFarland, CA 93250. (*See* first Docket Entry dated 7/18/23.) The United States Postal Service also returned the Order directing Plaintiff to file an IFP application or to pay the filing fee after it was initially served June 29, 2023; that piece of mail was also marked “Undeliverable, Not in Custody.” (*See* second Docket Entry dated 7/18/23.)

On September 7, 2023, the Court issued Findings and Recommendations to Dismiss Action for Failure to Obey Court Orders and Failure to Prosecute. (Doc. 7.) The Court recommended the action be dismissed without prejudice for Plaintiff’s failure to pay the filing fee or submit a completed IFP application as previously ordered. (*Id.* at 2-4.) Plaintiff was directed to file any objections within 14 days. (*Id.* at 4-5.) On September 21, 2023, Plaintiff filed his objections. (Doc. 8.)

II. DISCUSSION

Plaintiff objects to the findings and recommendations to dismiss this action for his failure to obey court orders and failure to prosecute. (Doc. 8.) Plaintiff contends “that the facility has not delivered mail which the Court notes the dates mail was returned marked ‘undeliverable,’ not in custody, which hinders Plaintiff knowing what the Court ordered.” (*Id.*) Further, Plaintiff states the “only [IFP] application Received by Plaintiff is enclosed with this motion.” (*Id.*) Finally, Plaintiff states he “is in the custody of which a change of address was properly submitted.” (*Id.*)

Because Plaintiff contends he never received this Court’s June 29, 2023, Order directing him to submit a completed and signed IFP application, the Court will vacate its findings and recommendations to dismiss this action.

Plaintiff will be ordered to submit a completed and signed IFP application,¹ accompanied by a current certification concerning his inmate trust account.

¹ The Court has reviewed the IFP application submitted with Plaintiff’s objections, filed in *Palmer v. Zanoni*, case number 1:23-cv-01004-GSA (PC). (Doc. 8 at 2-4.) However, that IFP application was completed nearly 90 days ago and includes an inmate trust account statement for the period between January 1, 2023 and June 26, 2023. Plaintiff will be directed to submit an updated IFP application for this action.

III. CONCLUSION AND ORDER

For the reasons stated above, **IT IS HEREBY ORDERED** that:

1. The Findings and Recommendations issued September 7, 2023 (Doc. 7) are
VACATED;
2. Plaintiff **SHALL** file a completed and signed IFP application **within 21 days** of the date of service of this order; and
3. The Clerk of the Court **SHALL** provide Plaintiff with a blank IFP application.

IT IS SO ORDERED.

Dated: **September 26, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE